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7 Attorneys for Plaintiff  
Ra Medical Systems, Inc.

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

12 Ra Medical Systems, Inc.,

13 Plaintiff,

14 v.

15 Uri Geiger, individual, Strata Skin  
Sciences Inc. and Accelmed Growth  
16 Partners, L.P.,

17 Defendants.

Case No. '19CV0920 AJB MSB

**PLAINTIFF RA MEDICAL'S COMPLAINT  
FOR DAMAGES AND DEMAND FOR JURY  
TRIAL**

19 Plaintiff Ra Medical Systems, Inc. ("Plaintiff" or "Ra Medical"), hereby brings  
20 this action against Defendants Uri Geiger ("Mr. Geiger"), Strata Skin Sciences Inc.  
21 ("Strata"), and Accelmed Growth Partners, L.P. ("Accelmed") (collectively  
22 "Defendants"), based on Defendants' disparaging, false, and misleading statements to  
23 Ra Medical's financial partners and potential investors before, during, and after the  
24 company's initial public offering ("IPO"), which: 1) violates a prior settlement  
25 agreement, 2) intentionally interferes with Ra Medical's contractual relations;  
26 3) intentionally interferes with Ra Medical's prospective economic relations; and 4) is  
27 trade libel, and on that basis alleges as follows:  
28

## **INTRODUCTION**

1  
2           **1.**     In 2011, Ra Medical and Strata's predecessor in interest, PhotoMedex, Inc.  
3 ("PhotoMedex"), settling seven related cases involving complex intellectual property  
4 claims, false marketing claims, and disputes involving Ra Medical's FDA approvals,  
5 entered into an omnibus Settlement Agreement. The parties released all claims and also  
6 entered into a non-disparagement agreement that broadly prohibits any statements  
7 regarding the FDA status of certain Ra Medical lasers or any purported false marketing.  
8 Subsequently, Strata expressly assumed the responsibilities of the Settlement  
9 Agreement.

10           **2.**     Last year, Mr. Geiger, as an agent of Strata and on behalf of Accelmed,  
11 and Strata breached the Settlement Agreement and disrupted the hard-fought peace by  
12 making disparaging and independently actionable false statements to Ra Medical's  
13 banking partners and the market at large, in an attempt to derail and devalue Ra  
14 Medical's IPO.

15           **3.**     These false statements had a substantial negative effect on Ra Medical's  
16 IPO, causing several key financial partners to back out of the IPO and delaying the IPO  
17 for several critical months. These changes, which were caused by Mr. Geiger's  
18 disparaging, false, and misleading communications, substantially damaged Ra Medical.

## **PARTIES**

19  
20           **4.**     Ra Medical develops life-saving and life-changing excimer medical lasers  
21 for use in the treatment of vascular and dermatological immune-mediated inflammatory  
22 diseases. Ra Medical is a Delaware corporation whose principal place of business is  
23 in San Diego, California.

24           **5.**     Strata is a Delaware corporation whose principal place of business is in  
25 Horsham, Pennsylvania. It is a successor in interest to PhotoMedex.

26           **6.**     Accelmed is incorporated in the Cayman Islands. Its principal place of  
27 business is in Herzliya Pituach, Israel.

28           **7.**     Mr. Geiger is an adult residing in Cresskill, New Jersey. Mr. Geiger is the

1 managing partner of Accelmed, which is the primary shareholder of Strata, and is the  
2 Chairman of the Board of Directors of Strata.

### 3 **JURISDICTION AND VENUE**

4 **8.** Jurisdiction and venue are proper in this Court because the action involves  
5 a breach of a prior Settlement Agreement between Ra Medical and Strata, as a successor  
6 in interest to PhotoMedex, which provides that the exclusive jurisdiction for such action  
7 is the United States District Court, Southern District of California. *See* Exhibit A,  
8 Section 18. Moreover, the Settlement Agreement provides that then-United States  
9 Magistrate Judge Cathy Ann Bencivengo, or her appointee, has jurisdiction to interpret  
10 and enforce all provisions of the Settlement Agreement.

11 **9.** In addition, this Court has subject matter jurisdiction because the amount  
12 in controversy exceeds \$75,000 and the parties are diverse, pursuant to 28 U.S.C. §  
13 1332.

14 **10.** Venue is also proper pursuant to 28 U.S.C. § 1391(b)(2) because a  
15 substantial part of the events giving rise to the claims occurred within this judicial  
16 district, including the injuries suffered by Ra Medical.

17 **11.** The Court has personal jurisdiction over Defendants because they  
18 regularly do business within the state of California.

### 19 **FACTUAL ALLEGATIONS**

#### 20 **Settlement and Strata's assumption of the obligations therein**

21 **12.** From 2003 through 2011, Ra Medical and PhotoMedex litigated numerous  
22 claims regarding the parties' intellectual property, marketing, advertising and Ra  
23 Medical's FDA approvals, resulting in seven separate cases being filed. Much of this  
24 litigation involved claims by PhotoMedex that Ra Medical's products exceeded its FDA  
25 clearances.

26 **13.** On May 13, 2011, Ra Medical and PhotoMedex executed an omnibus  
27 Settlement Agreement to resolve all of those claims. Specifically, the Settlement  
28 Agreement released "claims brought or which could have been brought in the

[l]itigation or claims which relate to actual or alleged acts of infringement by a Party hereto of any patents . . . .” *See* Exhibit A, Section 2. It also provided a non-disparagement clause to prevent this type of conduct going forward, which provides “[n]o Party shall make, or encourage or cause others to make, any statement or allegation, written or verbal, to any third party including, without limitation, a customer of the other Party or a governmental agency, concerning or relating to the FDA status of Ra Medical’s current lasers, Dean Irwin as an inventor of the first FDA-approved excimer laser for dermatology, or false marketing known to be untruthful.” *Id.* Section 7.

**14.** In June 2015, Mela Sciences, Inc. (“Mela”) purchased certain assets from PhotoMedex, including its XTRAC dermatology business. The XTRAC laser products were, in part, the subject of the claims settled between Ra Medical and PhotoMedex.

**15.** As part of the asset purchase, Mela expressly agreed to “assume and become responsible for paying, performing and discharging the Business Liabilities” as defined in the Asset Purchase Agreement. *See* Exhibit B, Preamble Section C. “Business Liabilities” include “[a]ll liabilities and obligations arising under Business Contracts . . .” *Id.* Section 1.1, Appendix II. “Business Contracts” are defined as those agreements listed in the Asset Purchase Agreement’s “Disclosure Letter.” *Id.*, Section 1.2, Section 3.15(a). The Disclosure Letter expressly identifies the Settlement Agreement – “Settlement and Release Agreement dated as of May 13, 2011 between Ra Medical Systems, Inc. and Dean Stewart Irwin, on one hand, and [PhotoMedex], on the other hand, in which [PhotoMedex] agreed not to engage in certain marketing activities with regard to the products of Ra Medical Systems, Inc.\*” – as a Business Contract for which Mela is assuming liability. *Id.*, Disclosure Letter Section 3.15(a)(viii). The Asset Purchase Agreement does not provide any exception for liabilities under any Business Contract, even those that are classified as excluded assets, for actions arising after the date of the Asset Purchase Agreement.

**16.** In December 2015, Mela was rebranded as Strata.

### **Competitors in laser treatments**

17. Ra Medical has two laser systems on the commercial market, DABRA for the treatment of vascular disease and Pharos for the treatment of dermatological diseases. Both use the same core technology and utilize a similar excimer laser.

18. Ra Medical's Pharos laser system has been marketed since 2004 and is designed for the treatment of inflammatory skin conditions. It is FDA cleared to treat psoriasis, vitiligo, atopic dermatitis, and leukoderma.

19. In May 2017, Ra Medical received FDA 510(k) clearance to market the DABRA laser system and single-use DABRA catheter in the U.S. for "crossing chronic total occlusions in patients with symptomatic infrainguinal lower extremity vascular disease," describing the intended use as "[f]or use in ablating a channel in occlusive peripheral vascular disease." Ra Medical's DABRA laser system is used by physicians as a tool in the treatment of peripheral artery disease, a form of peripheral vascular disease. These treatments are commonly referred to by the medical community as atherectomy.

20. Ra Medical's product competitors include companies owned by Accelmed and guided by Uri Geiger.

21. Strata produces the XTRAC laser system, which like Pharos, treats dermatological diseases, including vitiligo. In March 2018, Accelmed filed paperwork with the Securities and Exchange Commission stating that it intended to purchase 58.3% of Strata's common stock upon the closing of a transaction between Accelmed and Strata. On May 29, 2018, the transaction closed and Mr. Geiger immediately became Chairman of Strata's Board of Directors.

22. Eximo Medical is an Israeli company owned in whole or in part by Accelmed. In October 2018, it obtained FDA clearance for a laser system for treatment of peripheral artery disease, including atherectomy for blockages. While its B-laser system and DABRA currently have different FDA clearances, they both are used by physicians to treat artery blockages.

**Ra Medical prepares to go public**

23. In December 2017, Ra Medical began preparing to go public on the New York Stock Exchange.

24. The IPO process is time and resource intensive, requiring that the company work closely and cooperatively with financial partners, who serve as intermediaries between the company and investors. Financial institutions considering underwriting an IPO perform extensive due diligence on the offering company's products, finances, and potential weaknesses. For an IPO for a medical device company like Ra Medical, it is crucial that underwriters have specialized expertise in the field to appropriately guide the investing community and generate support.

25. Initially, Ra Medical partnered with UBS Investment Bank ("UBS"), to serve as the lead bank as it pursued its IPO. In December 2017, Ra Medical and UBS entered into a contract, whereby UBS agreed to act as the lead bookrunning manager for the proposed IPO. The lead bookrunning manager coordinates the issuance of the new IPO shares and is generally the firm that serves as lead underwriter. The contract specified that UBS would fill this role for one year or until the IPO closed. It also gave UBS a right of first refusal to act as a financial advisor to Ra Medical with regard to any sale involving the company. Ra Medical and UBS intended that UBS would serve as the formal lead underwriter for its IPO through the close of the transaction, and it was described to the investing public as such. In addition, as is common, Ra Medical also engaged other banks who would share in the risk for the offering, called the underwriting syndicate. These banks are each allotted portions of the company offering. Ra Medical tapped OppenheimerFunds to serve as a financial partner in the syndicate, as well as a number of other financial partners, including SunTrust, Cantor, and Nomura. Because, as part of any IPO, these financial partners perform extensive due diligence on the offering company, their support during the entirety of the IPO process is an important indicator to the market of the overall condition of the company and the viability of the offering.

1       **26.** Investment banks also employ research analysts. They operate  
2 independently, and 25 days after the IPO closes, are permitted to produce reports  
3 analyzing the company and its newly offered shares. These reports are relied on by the  
4 market to determine whether the shares of the newly public company is a good  
5 investment and the valuation of the shares going forward.

6       **27.** Moreover, the IPO process primarily relies on banks, such as UBS and  
7 Oppenheimer, to sell the newly issued shares to prospective investors in the market.  
8 Generally, this means that banks reach out to their established book of business in the  
9 particular sector and urge those individuals or entities to invest. This process begins  
10 long before the shares are available for purchase on the market, to ensure that the IPO  
11 sells out quickly. Thus, UBS and Oppenheimer would have already been discussing Ra  
12 Medical with prospective investors in the spring of 2018.

13       **28.** As of March 21, 2018, Ra Medical fully expected UBS to lead its IPO and  
14 OppenheimerFunds to serve in the syndicate, and stated as much in its SEC filings.

15       **29.** Ra Medical and their banking partners intended to close its public offering  
16 in July 2018, thereby gaining significant funding to support its sales and marketing  
17 efforts and taking advantage of a historically favorable market for IPO offerings.

18                   **Mr. Geiger's campaign to disparage Ra Medical**

19       **30.** In or around this time period, Mr. Geiger began a campaign of disparaging  
20 and misleading statements to the marketplace about Ra Medical in an effort to  
21 undermine the company IPO.

22       **31.** Mr. Geiger initiated a misinformation campaign to the banks leading Ra  
23 Medical's offering, trying to persuade them to abandon the deal. For instance, on  
24 May 22, 2018, Mr. Geiger emailed John Hagens of UBS, the banker leading the Ra  
25 Medical IPO, and made several false and misleading statements regarding Ra Medical.  
26 *See Exhibit C.* In that email, Mr. Geiger misleadingly implied that Ra Medical faced  
27 impending patent infringement claims from Strata and/or Mount Sinai regarding Ra  
28 Medical's Pharos laser. In fact, any claims held by Stata had been expressly and



1 irrevocably released as part of the 2011 Settlement Agreement. Moreover, Mount Sinai  
2 has not brought any patent infringement claims against Ra Medical, despite having  
3 communicated with Ra Medical as early as 2006 about the patents and entering into an  
4 exclusive license with PhotoMedex, Strata's predecessor in interest, that same year. As  
5 the managing partner of Accelmed, the soon to be majority owner of Strata's common  
6 stock, and pending Chairman of Strata's Board of Directors, Mr. Geiger would have  
7 known his statements, particularly regarding Strata's potential claims, were false. Mr.  
8 Geiger would have also known that his statements would concern Ra Medical's banks  
9 in the IPO, as a successful patent claim by a Ra Medical competitor could significantly  
10 threaten the company's ability to market their products and, even if unsuccessful, would  
11 consume company resources in litigation.

12 **32.** In addition, Mr. Geiger made several false statements regarding Ra  
13 Medical's DABRA laser and potential off-label marketing. First, Mr. Geiger falsely  
14 implied that Ra Medical was encouraging physicians to improperly seek and receive  
15 reimbursements for procedures using the DABRA device from government payors like  
16 the Centers for Medicare and Medicaid Services ("CMS"). *See* Exhibit C. This is a  
17 serious accusation, suggesting Ra Medical and physicians could face liability for  
18 inducing improper government payments. But Mr. Geiger's insinuation is entirely  
19 false. First, physicians are not strictly limited to use of medical devices consistent with  
20 FDA indications, if they determine that the device and procedure are medically  
21 appropriate for a particular patient. Many physicians have determined that the DABRA  
22 laser system is appropriate to treat a variety of artery blockages. Moreover, third party  
23 health payers can reimburse a procedure performed by a device that is not cleared or  
24 approved for a specific indication if, again, the physician determines that the device and  
25 procedure are medically appropriate for a particular patient. Indeed, CMS payments  
26 are predicated on the underlying treatment, *e.g.*, atherectomy for a blocked artery, not  
27 the device used to perform the treatment. Second, Mr. Geiger falsely implied that Ra  
28 Medical's device works in only 10% of the population, stating "the FDA clearance is



1 limited to CTO (which presents only at 10% of a[t]rectomy cases).” *Id.* In fact, Ra  
2 Medical’s FDA clearance describes DABRA’s “Intended Use” as “[f]or use in ablating  
3 a channel in occlusive peripheral vascular disease.” This broader description of  
4 DABRA’s FDA clearance, beyond chronic total occlusions, is omitted from Mr.  
5 Geiger’s email altogether. Physicians use DABRA on all types of plaque, not just  
6 chronic total occlusions, which are some of the most serious artery blockages. Mr.  
7 Geiger, as the managing partner of Accelmed, is well acquainted with these issues as a  
8 result of ownership of the Eximo company and its B-laser products and, on information  
9 and belief, is aware that these statements are false or misleading.

10 **33.** Mr. Geiger stated that the above issues “may result in underwrite[r]  
11 liability and effect your brand,” transparently attempting to influence Ra Medical’s lead  
12 bank to abandon the IPO.

13 **34.** This is not a case of a single email. Ra Medical has been informed, and on  
14 that basis alleges on information and belief, that Mr. Geiger sent communications like  
15 the one he sent to Mr. Hagens to many other banking partners involved in Ra Medical’s  
16 IPO, including OppenheimerFunds, as well as other banks who considered participation  
17 in the IPO. For example, Ra Medical understands that Piper Jaffray, the bank that  
18 ultimately led Ra Medical’s IPO, received similar communications from Mr. Geiger.  
19 Moreover, Mr. Geiger expressly threatened to withhold future business from financial  
20 institutions who participated in the IPO. For instance, on information and belief, Mr.  
21 Geiger informed OppenheimerFunds that if they continued with the Ra Medical IPO,  
22 that he would in future withhold his business. Far from normal competition based on  
23 the merits of each company’s products, Mr. Geiger engaged in a campaign of threats  
24 and intimidation against the syndicate banks and potential participants in the syndicate.

25 **35.** Moreover, he sent the same message to multiple research analysts, in an  
26 attempt to influence their view of Ra Medical’s business opportunity and impact their  
27 resulting reports to the marketplace.

28 **36.** Mr. Geiger has compounded these false statements by further publishing

1 them to the investing public. For instance, after Ra Medical attempted to address Mr.  
 2 Geiger's false statements via a preliminary letter outlining how his statements violated  
 3 the Settlement Agreement to which Strata is bound, Mr. Geiger and Strata immediately  
 4 published the dispute on the SEC's website. In particular, Strata filed a Form 8-K and  
 5 attached the entire complaint, including Mr. Geiger's email to UBS, which contained  
 6 the false and misleading statements outlined above. This filing was not required by the  
 7 SEC, and filing the entire complaint, with Mr. Geiger's email, is never required in an  
 8 SEC filing, and only serves to boost Defendants' false statements under the guise of  
 9 legal action.

10 **37.** And Mr. Geiger's campaign is still ongoing. For instance, in November 2,  
 11 2018, after Ra Medical's IPO had already closed, Mr. Geiger contacted a banking  
 12 partner and once again falsely asserted that physicians would face legal liability for  
 13 using the device and/or seeking reimbursement.

#### 14 **Impact on Ra Medical's IPO**

15 **38.** Ultimately, Mr. Geiger's communications to UBS and OppenheimerFunds  
 16 had their intended effect, including but not limited to the adverse impacts described  
 17 below.

18 **39.** In or around June 2018, UBS and OppenheimerFunds declined to  
 19 participate in the IPO, and UBS terminated its engagement to serve as Ra Medical's  
 20 lead bookrunning manager. The loss of two of Ra Medical's five banks, including its  
 21 lead bank, so late in the process, dramatically and negatively impacted the pending IPO.  
 22 First, the change meant that Ra Medical's IPO could not go forward as planned in July  
 23 2018. Ra Medical scrambled to find alternative banks to lead the IPO, and those banks  
 24 then had to complete their own due diligence. By necessity, this meant that the IPO  
 25 slipped into fall 2018, ultimately closing on October 1, 2018. By then, the historic IPO  
 26 market had passed, as most available investment funds had already been committed.

27 **40.** In addition, the loss of these banks late in the process generally undermined  
 28 the market's confidence in Ra Medical as an investment. For investors who UBS and

1 OppenheimerFunds had already contacted, urging their investment in the IPO, the  
2 sudden absence of these banks signaled, incorrectly, that Ra Medical was not a sound  
3 investment. For other buyers, even if they had not been directly contacted by UBS and  
4 Oppenheimer, the mere fact that these banks bowed out suggested that there was a  
5 fundamental problem with the IPO.

6 **41.** Having suffered the extensive delay caused by Mr. Geiger's misconduct,  
7 Ra Medical's IPO went forward on September 26, 2018. Shortly thereafter, the stock  
8 market suffered serious losses, including record losses during the month of October  
9 2018. During this period, Ra Medical was in a legally mandated "quiet period" and  
10 could not communicate with investors during this difficult time in the market. Its shares  
11 subsequently decreased in value, causing many initial investors to abandon their Ra  
12 Medical shares.

13 **42.** The damage caused by Mr. Geiger's false statements was thus  
14 compounded – Ra Medical lost two of its key investment banks, undermining market  
15 confidence and delaying its IPO unreasonably, and then suffered in a declining market  
16 in which it should never have found itself but for the Defendants' malicious and  
17 intentional acts.

18 **43.** Moreover, Defendants' disparaging, false and misleading statements to  
19 research analysts may have negatively impacted their views of Ra Medical and their  
20 resulting reports.

21 **44.** As a result, Ra Medical suffered significant damages, including a reduction  
22 in its initial IPO offering and decreased valuations in its shares thereafter.

### 23 **COUNT I**

#### 24 **BREACH OF THE SETTLEMENT AGREEMENT** 25 **(AGAINST MR. GEIGER AND STRATA)**

26 **45.** Ra Medical incorporates by reference all of the preceding allegations set  
27 forth above as if fully set forth herein.

28 **46.** In 2011, Ra Medical and PhotoMedex entered into the Settlement

1 Agreement. *See* Exhibit A. Subsequently, as part of its purchase of PhotoMedex's laser  
2 assets, Mela expressly assumed the responsibilities in that Settlement Agreement. Mela  
3 is now Strata, a successor in interest to the asset purchase and the responsibilities  
4 assumed therein. The Settlement Agreement prohibits disparaging statements regarding  
5 the FDA status of certain Ra Medical lasers, as well as false marketing known to be  
6 untrue.

7 **47.** Mr. Geiger, on behalf of Strata, breached these provisions by disparaging  
8 Ra Medical's FDA clearances, suggesting to banking partners that the DABRA system  
9 works in only 10% of cases, that physicians may face legal liability for using the laser  
10 outside of Ra Medical's FDA clearance and/or that reimbursement from governments  
11 payors for treatments outside of the FDA clearance may be improper. Moreover, Mr.  
12 Geiger falsely implied that Strata and/or Mount Sinai were pursuing patent claims  
13 against Ra Medical for its Pharos laser.

14 **48.** These statements violate the prohibition on statements relating to the FDA  
15 status of Ra Medical's lasers, as the DABRA system uses the same core excimer  
16 technology at issue in the prior litigations and Mr. Geiger is mischaracterizing the scope  
17 of the FDA clearance for DABRA. Moreover, Mr. Geiger's false and misleading  
18 assertions on these issues, to all of Ra Medical's prospective banking partners and the  
19 investing community at large, constitutes false marketing known to be untrue. As a  
20 result, Mr. Geiger, on behalf of Strata, is in breach of Section 7 of the Settlement  
21 Agreement.

22 **49.** Strata's breach, via Mr. Geiger, harmed Ra Medical, causing in whole or  
23 in part, UBS, OppenheimerFunds and other banking partners to abandon the IPO. Even  
24 were that not so, harm is presumed where a party breaches the Settlement Agreement's  
25 non-disparagement provisions, under the express terms of the Settlement Agreement.  
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**COUNT II**

INTENTIONAL INTERFERENCE IN CONTRACTUAL RELATIONS  
(AGAINST ALL DEFENDANTS)

**50.** Ra Medical incorporates by reference all of the preceding allegations set forth above as if fully set forth herein.

**51.** Ra Medical contracted with UBS to serve as the lead bookrunning manager through the IPO process, a contract that was still in place in spring 2018 when Mr. Geiger, on behalf of Accelmed and Strata, began making disparaging, false and misleading statements regarding Ra Medical to UBS and/or threatening to withhold future business from UBS if the bank participated in the IPO.

**52.** On information and belief, Mr. Geiger on his own behalf and on behalf of Accelmed and Strata, was aware of this contract, as such engagements are standard in an IPO process and Mr. Geiger is well acquainted with the norms for such offerings.

**53.** Defendants' actions disrupted UBS's performance as the lead bookrunning manager for the IPO and eventually caused the termination of UBS's contract with Ra Medical.

**54.** Defendants intended and advocated for this result, as Mr. Geiger specifically pointed to UBS's involvement in Ra Medical's IPO as the reason for his communications, implying that the issues he was raising would create liability for UBS and impact its brand. At the very least, Defendants knew the disruption to UBS's performance was certain or substantially certain to occur.

**55.** As a result of this interference, Ra Medical was harmed by disruption of its relationship with UBS, delay in its IPO offering, damage to its reputation in the market, all of which ultimately contributed to a reduction in its initial IPO offering and decreased valuations in its shares thereafter.

**56.** Defendants' disparaging, false and misleading statements were a substantial factor in UBS's decision not to participate in Ra Medical's IPO and terminate their role as the lead bookrunning manager and the resulting harm therein.

**COUNT III****INTENTIONAL INTERFERENCE IN PROSPECTIVE ECONOMIC RELATIONS  
(AGAINST ALL DEFENDANTS)**

**57.** Ra Medical incorporates by reference all of the preceding allegations set forth above as if fully set forth herein.

**58.** Ra Medical was partnering with select financial entities as part of its IPO offering, including investment bank UBS as the lead bank and OppenheimerFunds as a member of the syndicate. These partners offered deep expertise in medical device IPOs, and Ra Medical stood to benefit from this expertise and having the company go through a successful and seamless IPO process.

**59.** Mr. Geiger, on his own behalf and on behalf of Accelmed and Strata, knew that Ra Medical intended to partner with these third parties as part of the underwriting syndicate for Ra Medical's IPO. For example, Mr. Geiger specifically referenced UBS's role as a potential underwriter in his May email to UBS. He similarly, on information and belief, reached out to OppenheimerFunds and communicated his displeasure with their role in the Ra Medical IPO.

**60.** Mr. Geiger, on his own behalf and on behalf of Accelmed and Strata, made disparaging, false and misleading statements regarding Ra Medical to these banking partners.

**61.** On information and belief, Mr. Geiger made similar communications to many other banks considering participation in the IPO.

**62.** These communications were false and misleading and also breached the non-disparagement provisions in the Parties' Settlement Agreement, provisions which bound Defendant Strata and Mr. Geiger as Strata's agent.

**63.** Mr. Geiger, on his own behalf and on behalf of Accelmed and Strata, made these communications in order to disrupt Ra Medical's relationship with its banking partners, including UBS and OppenheimerFunds, or knew that disruption of those relationships was certain or substantially certain.

1           **64.** He succeeded, as UBS and OppenheimerFunds both withdrew from the  
 2 IPO, at least in part due to Mr. Geiger's disparaging statements and false and misleading  
 3 implications regarding Ra Medical's actions.

4           **65.** As a result of this interference, Ra Medical was harmed by disruption of  
 5 its relationship with UBS and OppenheimerFunds, the delay in its IPO offering, damage  
 6 to its reputation in the market, and ultimately, a reduction in its initial IPO offering and  
 7 decreased valuations in its shares thereafter.

8           **66.** Defendants' disparaging, false and misleading statements were a  
 9 substantial factor in these banking partner's decisions not to participate in Ra Medical's  
 10 IPO and the resulting harm therein.

11   **COUNT IV**  
 12   TRADE LIBEL  
 13   (AGAINST ALL DEFENDANTS)

14           **67.** Ra Medical incorporates by reference all of the preceding allegations set  
 15 forth above as if fully set forth herein.

16           **68.** Mr. Geiger's comments about Ra Medical, made on his own behalf and on  
 17 behalf of Accelmed and Strata, disparaged the company's business and accused Ra  
 18 Medical of acting improperly, including inducing physicians to pursue improper  
 19 government payments and patent infringement. This disparaged both Ra Medical's  
 20 services to their physician customers and the quality of their laser products. These  
 21 statements, alone and in combination, portrayed Ra Medical as an unscrupulous actor  
 22 whose IPO could hurt prospective banking partners and investors.

23           **69.** These statements were made to UBS and, on information and belief, to  
 24 OppenheimerFunds and other financial partners.

25           **70.** These statements were false and misleading, as described above.

26           **71.** Mr. Geiger knew that these statements were untrue or acted with reckless  
 27 disregard for the truth or falsity of his statements. For instance, Mr. Geiger would have  
 28 been aware that Strata no longer held patent infringement claims against Ra Medical



1 due to the prior releases contained in the Settlement Agreement and that Mount Sinai,  
2 PhotoMedex's licensing partner since 2006, has not pursued any potential patent claims  
3 against Ra Medical. Moreover, as the managing partner of Accelmed, an owner of a  
4 vascular laser product produced by Eximo, Mr. Geiger would have known that  
5 physicians can seek reimbursement for treatment regardless of the devices utilized  
6 therein, and that they can, in appropriate circumstances elect to use devices beyond their  
7 FDA clearance. Mr. Geiger would also know that Ra Medical's clearance means that  
8 its DABRA laser system can be used to treat peripheral vascular disease and that  
9 physicians may determine, on that basis, to use it in a variety of treatments commonly  
10 referred to as atherectomy.

11 **72.** Mr. Geiger knew and intended that his disparaging statements would be  
12 relied on, and that UBS, OppenheimerFunds and other financial partners would believe  
13 his assertions and refuse to participate in Ra Medical's IPO. There was no other reason  
14 for his broad campaign against Ra Medical.

15 **73.** As a result, Ra Medical suffered a reduction in its initial IPO offering and  
16 decreased valuations in its shares thereafter.

17 **74.** Defendants' disparaging, false and misleading statements were a  
18 substantial factor in causing these partners not to participate in Ra Medical's IPO and  
19 the resulting harm therein.

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**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants as follows:

A. An order adjudging that Defendants Mr. Geiger and Strata breached Section 7 of the Settlement Agreement via Mr. Geiger's communications to banking partners and investors and awarding all available damages and relief;

B. An order adjudging that Defendants committed intentional interference with contractual relations and awarding all available damages and relief;

C. An order adjudging that Defendants committed intentional interference with prospective economic relations and awarding all available damages and relief;

D. An order adjudging that Defendants committed trade libel and awarding all available damages and relief;

E. For Plaintiff's costs and attorneys' fees incurred in prosecuting the breach of the Settlement Agreement, as provided for under Section 19 of that Settlement Agreement;

F. For prejudgment interest;

G. For such other and further relief as this Court deems just and proper.

Dated: May 16, 2019

COOLEY LLP

By: /s/ Michael A. Attanasio

Michael A. Attanasio  
M. Ray Hartman III  
Megan Donohue

*Attorneys for Plaintiff  
Ra Medical Systems, Inc.*

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

RA Medical Systems, Inc.

(b) County of Residence of First Listed Plaintiff San Diego County, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael A. Attanasio, M. Ray Hartman III, Megan L. Donohue  
Cooley LLP  
4401 Eastgate Mall, San Diego, CA 92121; (858) 550-6000

**DEFENDANTS**

Uri Geiger, Strata Skin Sciences Inc., Accelmed Growth Partners, L.P.

County of Residence of First Listed Defendant Bergen County, NJ  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'19CV0920 AJB MSB****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                                       |   |                                       |                                       |
|---|----------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                        | DEF                                   |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input checked="" type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation—Transfer
- ☐ 8 Multidistrict Litigation—Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

**VI. CAUSE OF ACTION**

Brief description of cause:

Action for breach of settlement agreement; intentional interference with contract and prospective business advantage; and trade libel

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S)  
IF ANY**

Honorable Cathry Jean Benavengo, see  
Notice of Related Cases filed herewith

No. 04-CV-0024 JLS  
(CAB) (S.D. Cal.)

(See instructions):

No. 18-21421 (Court of  
Common Pleas of  
Montgomery Co., Pa.)

JUDGE Joseph A. Smyth, S.J., DOCKET NUMBER Montgomery Co., Pa.)

DATE May 16, 2019

SIGNATURE OF ATTORNEY OF RECORD /s/ Michael A. Attanasio

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

